

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

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IN THE MATTER OF THE :  
STANDARD CHLORINE CHEMICAL COMPANY :  
SUPERFUND SITE :  
Kearny, Hudson County, NJ :  
 :  
Standard Chlorine Chemical Co., Inc.; :  
and Beazer East, Inc., :  
 :  
Respondents. : Index No.: CERCLA 02-2010-2012  
 :  
Proceeding under Sections 104, 106(a), :  
107, and 122 of the Comprehensive :  
Environmental Response, Compensation, :  
And Liability Act of 1980, as amended, :  
42 U.S.C. §§ 9604, 9606(a), 9607 :  
and 9622. :  
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ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT  
FOR REMOVAL ACTION

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (the "Agreement and Order") is entered into voluntarily by Standard Chlorine Chemical Co., Inc. ("Respondent Standard Chlorine")<sup>1</sup> and Beazer East, Inc. ("Respondent Beazer"), collectively referred to hereinafter as "Respondents," and the United States Environmental Protection Agency ("EPA") and requires Respondents to perform a removal action and pay certain response costs in connection with the Standard Chlorine Chemical Company Site ("Site"), located at 1025 through 1035 Belleville Turnpike on Block 287, Lots 48, 49, 50, 51, 52 and 52.01<sup>2</sup> of the Town of Kearny, Hudson County, New Jersey.

2. This Agreement and Order is issued to Respondents by EPA pursuant to the authority vested in the President of the United States under Sections 104, 106(a), 107, and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability

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1 Respondent Standard Chlorine enters into this Agreement and Order on behalf of itself and its wholly-owned subsidiary Standard Naphthalene Products Company, Inc. ("Standard Naphthalene").

2 Block 287, Lot 52.01 is the former Lot 52R.

Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622(a), and duly delegated to the EPA Region 2 Director of the Emergency and Remedial Response Division ("ERRD"). EPA has notified the State of New Jersey (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

3. Respondents' participation in this Agreement and Order shall neither constitute nor be construed as an admission of liability or an admission of EPA's findings of fact or determinations of law contained in this Agreement and Order. Respondents agree to the following: to comply with and be bound by the terms of this Agreement and Order; not to contest the authority or jurisdiction of the EPA Region 2 Director of ERRD to issue this Agreement and Order; and not to contest the validity of this Agreement and Order or its terms. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement and Order, the validity of the findings of fact and conclusions of law and determinations of this Agreement and Order.

4. Respondents are jointly and severally liable for carrying out all activities required by this Agreement and Order. In the event of the insolvency or other failure of either one of the individual Respondents to implement the requirements of this Agreement and Order, the remaining Respondent shall complete all such requirements and be responsible for repayment of EPA's costs as required by this Agreement and Order.

## II. PARTIES BOUND

5. This Agreement and Order applies to and is binding upon EPA; Respondent Standard Chlorine and its successors and assigns; and Respondent Beazer and its successors and assigns. Any change in the ownership or corporate status of the individual Respondents, including, but not limited to, any transfer of assets or real or personal property, shall not alter the responsibilities of the individual Respondents under this Agreement and Order.

## III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Agreement and Order or in an attachment to this Agreement and Order, the following definitions shall apply:

"Agreement and Order" shall mean this Administrative Settlement Agreement and Order on Consent, Index Number CERCLA-02-2010-2012, and all appendices attached hereto (listed in Section XVII). In the event of conflict between

this Agreement and Order and any appendix, this Agreement and Order shall control.

The term "day" means a calendar day unless otherwise expressly stated. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Agreement and Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business on the next Working Day.

"Effective Date" shall be the effective date of this Agreement and Order as provided in Section XVIII.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" means all direct and indirect costs incurred by EPA in overseeing Respondents' implementation of the Work and otherwise implementing, overseeing, and enforcing this Agreement and Order until the date of EPA's written approval pursuant to Section XVI below.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. §9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. §9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Party" or "Parties" means EPA and/or the individual Respondent(s).

"Site" shall mean the Standard Chlorine Chemical Co., Inc. Superfund Site located at 1025 through 1035 Belleville Turnpike, Town of Kearny, Hudson County, New Jersey. The Site is comprised of several parcels located on Block 287, Lots 48, 49, 50, 51, 52 and 52.01. The Site occupies approximately 25 acres in an industrial area bounded by the former Diamond Shamrock site to the north, the Hackensack River to the east, the former Koppers Company, Inc. Seaboard Site to the south, and the Belleville Turnpike to the west and includes the areal extent of contamination where hazardous substances have migrated or threaten to migrate and all suitable areas in very close proximity to the contamination necessary for implementation of the response action. The Site is depicted generally on the map attached as Appendix A.

"Waste" means: i. any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); ii. any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); iii. any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); iv. any solid, liquid, sludge, or any mixture thereof which is a pesticide, insecticide, fungicide, rodenticide, and/or nematocide pursuant to the Federal Insecticide, Fungicide and Rodenticide Act and its associated regulations; and v. any mixture containing any of the constituents noted in i., ii., iii., or iv. above.

"Work" means all work and other activities that Respondents are required to perform pursuant to this Agreement and Order.

#### IV. EPA'S FINDINGS OF FACT

7. The Site is located at 1025 through 1035 Belleville Turnpike, 3 Town of Kearny, Hudson County, New Jersey on Block 287, Lots 48, 49, 50, 51, 52 and 52.01. The Site occupies approximately 25 acres and is located in an industrial area of Hudson County. The Site is bounded to the east by the Hackensack River, to the west by Belleville Turnpike, to the north by the former Diamond Shamrock Site, and to the south by the Koppers Company, Inc. Seaboard Site ("Koppers Seaboard Site"). Both the Diamond Shamrock and Koppers Seaboard Sites are under the State of New Jersey's Site Remediation program within the New Jersey Department of Environmental Protection ("NJDEP").

8. The Site, although zoned for heavy industrial use, lies in the Hackensack Meadowlands which has been identified by the United States Fish and Wildlife Service as a Significant Habitat Complex of the New York Bight Watershed and the Hackensack Meadowlands may be a habitat for some State and Federal designated endangered or threatened species. There are at least seven species of fish in the Hackensack River that have management plans through the National Marine Fisheries Service thereby designating the Hackensack River as Essential Fish Habitat. Moreover, the Hackensack Meadowlands are the largest remaining brackish wetland complex in the New York-New Jersey Harbor Estuary.

9. Additionally, the Site is located at the southern end of the Hackensack Meadowlands District, which is an Atlantic flyway stopover and nesting point for migratory birds. Of the 265 bird species that migrate through the Hackensack Meadowlands, 63 species

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3 The address of the Site was formerly known as 1015-1025 Belleville Turnpike (Lots 48, 49, 51, 52 and 52.01) and 1035 Belleville Turnpike (Lot 50).

nest in the Hackensack Meadowlands and some use the Hackensack River as a food source.

10. The Hackensack River is used by boaters, jet skiers, canoers, and kayakers for recreational purposes. Fishing and crabbing reportedly takes place in the Hackensack River from boats. There are also reportedly two popular fishing areas located within 0.5 miles of the Site. Due to polychlorinated biphenyl ("PCB") and dioxin contamination, Fish Consumption Advisories exist for the Hackensack River for certain fish and blue crab.

11. The Site includes numerous buildings, five empty tanks, and two lagoons that were associated with former Site industrial manufacturing operations described below.

12. Respondent Standard Chlorine is the owner of Lot 50 of the Site, and its wholly-owned subsidiary Standard Naphthalene owns the remaining lots listed above that comprise the Site. Respondent Beazer was formerly known as Koppers Company, Inc. before it changed its name in 1989 to Beazer Materials and Services, Inc. and again changed its name in 1990 to Beazer East, Inc. Beazer formerly owned portions of the Site and formerly conducted activities on those portions of the Site that it owned. Occidental Chemical Corporation is a corporate successor to the Diamond Shamrock Chemical Company which produced chromium ore processing residue ("COPR") at the neighboring Diamond Shamrock Site. According to the 1993 Remedial Investigation Report prepared by Roy F. Weston, COPR was used as fill on roughly 85% of the Site.

13. Operations began at the Site in 1916 and have continued until 1993, when all Site activity ceased. In 1916, the White Tar Company began the refinement of crude coal-tar naphthalene on Lots 48 and 49 to produce moth preventatives and other naphthalene products. In 1929, American Tar Products, Inc. acquired the stock of the White Tar Company and continued the White Tar Company's manufacturing activities at the Site, refining coal-tar naphthalene and producing naphthalene products. In 1934, the Koppers Gas & Coke Company - a corporate predecessor of Beazer - acquired the stock of American Tar Products and, in 1935, American Tar Products transferred its assets, including the White Tar Company stock, to Koppers Gas & Coke. In 1942, the White Tar Company was liquidated and its assets - including the land and operations on the portions of the Site where White Tar operated - were transferred to Koppers Gas & Coke (which at that time was known as Koppers Company). In 1944, Koppers Company was merged into Beazer and, in 1946, Beazer acquired Lots 51, 52, and 52.01 from Thomas A. Edison, Inc. In 1962, Standard Naphthalene acquired these lots and the plant from Beazer. Standard Naphthalene processed liquid petroleum naphthalene from 1963 to 1980 on these lots. Additionally, Standard Naphthalene leased a processing building (the "Distillation

Building") located on Lot 49, as well as a number of tanks adjacent to that building, to Respondent Standard Chlorine for use in its operations. From 1970 until 1980, Standard Chlorine separated and stored 1,2,4-trichlorobenzene on Lot 49. Standard Naphthalene discontinued business operations in 1981.

14. Operations on Lot 50 of the Site began in 1928 with the Thomas A. Edison, Inc.'s construction of a lead-acid battery manufacturing facility. These activities continued through early 1954. In the mid-1950s to 1963, Tanatex Chemical Corporation leased a few buildings and equipment on Lot 50 for its dye-carrier manufacturing facility. In 1954, Crown Rubber Products purchased Lot 50 and operated a manufacturing facility for molded rubber products until 1959. From 1959 through late 1962, Keaton Rubber Products owned Lot 50 and operated a manufacturing facility and leased a portion of the lot to Tanatex Chemical Corporation, as noted above.

15. In 1962, Respondent Standard Chlorine acquired Lot 50 and its wholly-owned subsidiary Standard Naphthalene acquired Lots 48, 49, 51, 52 and 52.01 (as noted in Paragraph 13). On Lot 50, Respondent Standard Chlorine manufactured and packaged dichlorobenzene products, such as moth crystals and flakes, from 1962 to 1981. Additionally, from 1962 to 1993, Cloroben Chemical Corporation, a subsidiary of Respondent Standard Chlorine, formulated and packaged drain-cleaner products using raw materials such as orthodichlorobenzene (until 1982), sulfuric acid, hydrochloric acid, methyl benzoate, terpene solvents, and enzymes. All chemical manufacturing operations on Lot 50 were discontinued in 1993.

16. The primary contaminants at the Site include, but are not limited to, PCBs, chlorinated benzene compounds, naphthalene, chromium, hexavalent chromium and furans and dioxins, including 2,3,7,8 tetrachlorodibenzo-p-dioxin ("TCDD"). Additionally, as noted, the chromium stems from the COPR that underlies roughly 85% of the Site according to the 1993 Remedial Investigation Report by Weston.

17. The primary areas of contamination at the Site include contaminated soils, two lagoons on the eastern portion of the Site with an approximate surface area of 33,000 square feet and an average depth of 6 feet, and PCB- and lead-contaminated soils and concrete near Building 2 on the western side of the Site. Surface runoff from these areas may ultimately drain into the Hackensack River via three points of entry: (1) a drainage pipe along the northern boundary of the Site; (2) a drainage ditch that runs along the southern boundary of the Site; and (3) overland runoff that flows directly from the Site to the Hackensack River.

18. Additionally, it is reported that an estimated 2.5 million pounds of orthodichlorobenzene and 1.5 million pounds of 1,2,4-

trichlorobenzene were produced onsite on Lot 49 by Standard Chlorine during its years of operation. Furthermore, an estimated 1,500 pounds per year and 5,000 pounds per year of 1,2,4-trichlorobenzene were released in air emissions and wastewater discharges, respectively.

19. In October 1989, Respondent Standard Chlorine entered into an Administrative Consent Order ("1989 ACO") with the NJDEP to conduct a remedial investigation and perform a remedial action at the Site.

20. In April 1990, the NJDEP entered into a separate Administrative Consent Order (the "1990 ACO") with Occidental and Chemical Land Holdings, Inc. (whose successor is Tierra Solutions, Inc. ("Tierra"), who now owns the Diamond Shamrock Site) to address the COPR at 26 sites in New Jersey, one of which is the Site at issue herein.

21. As a result of the 1989 and 1990 ACOs, as well as pre-ACO activities by Respondent Standard Chlorine, and by NJDEP and EPA, since 1984 there have been several interim removal and remedial measures undertaken, work plans prepared, and studies and remedial investigations completed at the Site under NJDEP's purview. In addition, NJDEP has approved implementation of a Site-wide Interim Remedial Action Workplan which Respondents Standard Chlorine and Beazer, together with Tierra, are obtaining appropriate permits and approvals to implement.

22. In April 2003, EPA proposed the Site for placement onto the National Priorities List ("NPL"), pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. §9605(a)(8)(B). See 68 Fed. Reg. 23094. The Site was subsequently placed on the NPL in September 2007. See 72 Fed. Reg. 53463.

23. As a result of the Site's NPL status, EPA conducted a removal site evaluation ("RSE") at the Site on April 8, 2008 and documented the findings on January 27, 2009. Namely, the RSE found that the potential for TCDD releases from certain buildings in the eastern portion of the Site, including one building formerly used in processing substances associated with the potential for dioxin contamination, warrants a CERCLA time-critical removal action.

24. These buildings are within an area fenced with barbed-wire that is lined with black fabric and contains no trespassing signs. One of the buildings is the former Distillation Building which is about eight stories tall. The remaining buildings are one to three stories tall, near the northern fence line of the Site.

25. Several of the buildings on this portion of the Site are exposed to the elements through open and broken windows and

doorways. This provides a route for air currents to flow through the buildings. High winds can result in the migration of dust that may be present within the structures. These conditions could potentially result in localized increases in wind velocities between the buildings/rooms through channeling of air currents.

26. A couple of the open buildings stand well above the Site and the Hackensack River and could potentially provide a mechanism for dust migration through wind currents blowing through those buildings. Persons in the vicinity of these buildings, including on and off-site workers, site visitors, and trespassers could potentially be exposed to dust that may migrate from the many openings in these buildings.

27. The Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

28. The conditions described in Paragraphs 24 through 26 above constitute a "release" or threat of "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22). In addition, there is a threat of further releases of hazardous substances at and from the Site.

29. TCDD is a CERCLA-designated hazardous substance as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14). The most noted health effect in people exposed to large amounts of TCDD is chloracne, a severe skin disease with lesions that occur mainly on the face and upper body. Additionally, EPA has classified TCDD as a probable human carcinogen.

30. Exposure to various hazardous substances present at the Site by direct contact, inhalation, or ingestion may cause a variety of adverse human health effects.

#### V. EPA'S CONCLUSIONS OF LAW AND DETERMINATIONS

31. The following jurisdictional requirements of CERCLA are satisfied: (1) the Site is a "facility" as defined in Section 101(9) of CERCLA; (2) Respondents are "persons" as defined in Section 101(21) of CERCLA; (3) TCDD is a "hazardous substance" as defined in Section 101(14) of CERCLA; and (4) the conditions described in Section IV, the Findings of Fact, above constitute an actual or threatened "release" of a hazardous substance from the facility as defined in Section 101(22) of CERCLA.

32. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not limited to, the following conditions:

i. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; and

ii. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.

33. Respondents are responsible parties within the meaning of Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2).

34. Based upon the Findings of Fact and Conclusions of Law and Determinations set forth above, and the administrative record supporting this removal action, EPA has determined that the actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and further determines that a removal action at the Site is necessary to protect the public health or welfare or the environment. The actions required by this Agreement and Order are in the public interest and, if carried out in compliance with the terms herein, will be considered to be consistent with the NCP.

#### VI. SETTLEMENT AGREEMENT AND ORDER

35. It is hereby agreed and ordered that Respondents shall undertake a removal action at the Site, as set forth in Section VII below, and comply with all of the provisions of this Agreement and Order. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

#### VII. WORK TO BE PERFORMED

##### A. Designation of Key Personnel

36. Within five (5) days after the Effective Date of this Agreement and Order, Respondents shall submit to EPA the name, address, qualifications, and telephone number of a designated coordinator, to be known as the Project Coordinator. The Project Coordinator shall not be an attorney engaged in the practice of law. He or she shall have the technical expertise sufficient to adequately oversee all aspects of the Work contemplated by this Agreement and Order. Respondents shall ensure that all Work requiring certification by a professional engineer licensed in the State of New Jersey shall be reviewed and certified by such. The Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Agreement and Order. Respondents may

change their Project Coordinator provided that EPA has received written notice at least seven (7) days prior to the desired change unless EPA agrees to a shorter period in writing.

37. Selection of the Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Project Coordinator, Respondents shall propose a different person and notify EPA of that person's name, address, telephone number and qualifications within seven (7) days following EPA's disapproval. All changes of the Project Coordinator shall be subject to EPA approval.

38. All activities required of Respondents under the terms of this Agreement and Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by Federal, State, and/or local governments consistent with Section 121 of CERCLA, 42 U.S.C § 9621, and all Work conducted pursuant to this Agreement and Order shall be performed in accordance with prevailing professional standards.

39. Respondents shall retain at least one contractor to perform the Work. Respondents shall notify EPA of the name and qualifications of a proposed contractor within ten (10) days of the Effective Date of this Agreement and Order. Respondents shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Agreement and Order at least ten (10) days prior to commencement of such Work unless EPA agrees to a shorter period in writing.

40. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondents. Respondents shall propose a different contractor or subcontractor within seven (7) days of receipt of any written EPA disapproval.

41. EPA has designated the following On-Scene Coordinator ("OSC") for the Site: Kimberly Staiger, Removal Action Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 2890 Woodbridge Avenue, Bldg. 209 (MS-211), Edison, NJ 08837-3679. EPA will notify Respondents' Project Coordinator if EPA designates a different OSC for this Site. The OSC or his/her authorized representative will conduct oversight of the implementation of this Agreement and Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Agreement and Order, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

B. Reporting

42. During the implementation of the Work, Respondents shall provide EPA with written progress reports every fourteen (14) days starting from the date of EPA's approval of the Work Plan until the date Respondents submit the Final Report required by this Agreement and Order. All written progress reports shall fully describe all actions and activities undertaken pursuant to this Agreement and Order. Such progress reports shall, among other things: (a) describe the actions taken toward achieving compliance with this Agreement and Order during the reporting period; (b) describe all actions which are scheduled for the next reporting period; (c) provide other information relating to the progress of Work as is customary in the industry; and (d) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

43. Documents required to be submitted to EPA under this Agreement and Order shall be sent as designated below:

Original, hard copy and electronic copy to:

Kimberly Staiger, OSC  
U.S. Environmental Protection Agency  
Region II - Removal Action Branch  
2890 Woodbridge Avenue, Bldg. 209, MS-211  
Edison, NJ 08837-3679  
Staiger.Kimberly@epa.gov

Edward Als, RPM  
U.S. Environmental Protection Agency  
Region II - Eastern NY Remediation Section  
Emergency and Remedial Response Division  
290 Broadway, 20<sup>th</sup> Floor  
New York City, New York 10007-1866  
Als.Ed@epa.gov

1 electronic copy to:

Sarah Flanagan, Esq.  
flanagan.sarah@epa.gov

1 hard copy to:

Chris Kanakis, Case Manager  
New Jersey Department of Environmental Protection  
Office of Brownfield Reuse  
401 E. State Street

PO Box 028  
Trenton, NJ 08625

C. Description of Work

44. Respondents shall perform, at a minimum, all actions necessary to implement the Work, which shall generally include, but is not limited to, the following:

i. Close and seal the openings of all buildings located on the eastern portion of the Site within the inner fenced area to reduce the threat of direct contact and minimize the potential for off-site migration and exposure to on and off-site workers, site visitors, and trespassers.

ii. Maintain and replace as necessary existing warning signs along the fencing, in consultation with EPA.

iii. Maintain and replace as necessary existing fencing around buildings on eastern portion of the Site.

D. Work Plan and Implementation

45. Within ten (10) days after the Effective Date of this Agreement and Order, Respondents shall submit to EPA for review and approval a draft Work Plan. The draft Work Plan shall provide a detailed description of the actions required by this Agreement and Order, and shall include, but not be limited to, the following:

- a. Detailed proposed project schedule for accomplishing the assigned tasks;
- b. Map depicting, to the extent known and determined, all work and safety zones;
- c. Plan for providing Site security during implementation of the Work; and
- d. Health and Safety Plan ("HSP") that shall ensure the protection of the public health and safety during performance of on-Site work. The HSP shall be prepared in accordance with EPA's guidance document entitled "Standard Operating Safety Guides," OSWER Directive 9285.1-03, June 1992. In addition, the HSP shall comply with all current applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. The HSP shall also include contingency planning. Respondents shall incorporate all changes to the plan required by EPA and shall implement the plan during the duration of the removal action. If performance of any subsequent phase of the Work required by this Agreement and Order requires alteration of the

HSP, Respondents shall submit to EPA for review and approval proposed amendments to the HSP.

46. EPA will either approve, disapprove or require modifications to the draft Work Plan in whole or in part pursuant to Section VII.G. below. Respondents shall commence implementation of the Work Plan within ten (10) days after receipt of EPA's written approval of the Work Plan.

#### E. Final Report

47. A Final Report summarizing the actions taken to comply with this Agreement and Order shall be submitted within thirty (30) days of the completion of the Work required under this Agreement and Order. The Final Report shall include:

- a. A synopsis of all Work performed under this Agreement and Order;
- b. A detailed description of all EPA-approved modifications to the SOW which occurred during Respondents PRG's performance of the Work required under this Agreement and Order;
- c. The following certification signed by a person who supervised or directed the preparation of the Final Report:

*"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this final report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."*

48. EPA will either approve, disapprove or require modifications to the Final Report pursuant to Section VII.G below.

49. If EPA determines that any removal activities have not been completed in accordance with this Agreement and Order, EPA will so notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies.

#### F. Notifications

50. EPA correspondence related to this Agreement and Order will be sent to the Project Coordinator on behalf of Respondents. To the extent possible, the Project Coordinator shall be present during on-Site activities or readily available for EPA to contact during all working days and be retained by Respondents at all times until

EPA issues a notice of completion of the Work in accordance with Section XVI. Notice by EPA in writing to the Project Coordinator shall be deemed notice to Respondents for all matters relating to the Work and shall be deemed effective upon receipt.

51. Respondents shall provide EPA with 48 hours notice of any change in the approved project schedule.

52. At the end of the six (6) year record retention period specified in Subsection VII.J below, each Respondent shall notify EPA at least thirty (30) days before any document or information is destroyed by such Respondent that such documents and information are available for inspection. Upon request, such Respondent shall provide EPA with the originals or copies of such documents and information.

G. Plans and Reports Requiring EPA Approval

53. All plans, reports, and other submittals required to be submitted to EPA pursuant to this Agreement and Order shall be deemed to be incorporated in and an enforceable part of this Agreement and Order upon approval by EPA.

54. If EPA disapproves or otherwise requires any modifications to any plan, report, or other item required to be submitted to EPA for approval pursuant to this Agreement and Order, EPA may direct Respondents to make the necessary modifications thereto within fourteen (14) days of Respondents' receipt of the modifications, and/or EPA may amend or develop the item(s).

55. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Agreement and Order is disapproved by EPA after being resubmitted following Respondents' receipt of EPA's comments on the initial submittal, Respondents shall be deemed to be out of compliance with this Agreement and Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondents. Respondents shall implement any such item(s) as amended or developed by EPA.

H. Dispute Resolution

56. Unless otherwise expressly provided for in this Agreement and Order, the dispute resolution procedures of this Section VII.H shall be the exclusive mechanism for resolving disputes arising under this Agreement and Order. The Parties shall attempt to resolve any disagreements concerning this Agreement and Order expeditiously and informally.

57. If Respondents object to any EPA action taken pursuant to this Agreement and Order, including billings for Future Response Costs, Respondents shall notify EPA in writing of their objection(s) within fourteen (14) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have fourteen (14) days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

58. Any agreement reached by the Parties pursuant to this Section VII.H shall be in writing and shall, upon signature by all Parties, be incorporated into and become an enforceable part of this Agreement and Order. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Divisional Director level or higher will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Agreement and Order. Respondents' obligations under this Agreement and Order shall not be tolled by submission of any objection for dispute resolution under this Section VII.H. Following resolution of the dispute, as provided by this Section VII.H, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

#### I. Access to Property and Information

59. If the Site, or any other property where access is needed to implement this Agreement and Order, is owned or controlled by either of the Respondents, such Respondent shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Agreement and Order.

60. In the event that Work under this Agreement and Order is to be performed in areas owned by or in possession of someone other than the individual Respondents, Respondents shall use their best efforts to obtain access agreements from the present owners within twenty (20) days of the Effective Date of this Agreement and Order. Such agreements shall provide access not only for Respondents but also for EPA and its designated representatives or agents as well.

61. Notwithstanding any other provision of this Agreement and Order, EPA hereby retains all of its information gathering, access, and inspection authority under Section 104(e) of CERCLA, 42 U.S.C §9604(e), the Resource, Conservation and Recovery Act, and any other applicable statutes or regulations.

#### J. Record Retention

62. Respondents shall preserve a copy of all documents and information relating to Work performed under this Agreement and Order, or relating to Waste materials found on or released from the Site, for six (6) years after completion of the Work required by this Agreement and Order.

63. At the conclusion of this document retention period, Respondents shall notify EPA at least 90 days prior to the destruction of any such documents or information, and, upon request by EPA, Respondents shall deliver any such documents or information to EPA or the State of New Jersey. Respondents may assert that certain documents or information are privileged under the attorney-client privilege or any other privilege or protection from disclosure recognized by applicable law. If Respondents assert such a privilege, they shall provide EPA or the State of New Jersey with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient of the document, record, or information; 5) a description of the subject matter of the document, record, or information; and 6) the privilege asserted by Respondents. However, no documents, reports, or information (or data, reports, field notes, pictures, charts, or images) created or generated pursuant to the requirements of this Agreement and Order shall be withheld on the grounds that they are privileged.

64. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential CERCLA liability by EPA or since entry into the 1989 ACO, if applicable, regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. §6927.

#### K. Compliance With Other Laws

65. All actions required pursuant to this Agreement and Order shall be performed in accordance with all applicable Federal and state laws and regulations except as provided in CERCLA §121(e)(1), 42 U.S.C. §9621(e)(1), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. §300.415(j), all on-Site actions required pursuant to this Agreement and Order shall, to the extent practicable, as determined by EPA, considering the exigencies of

the situation, attain applicable or relevant and appropriate requirements ("ARARS") under federal environmental or state environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARS During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

66. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work performed pursuant to this Agreement and Order is not "on-site" as defined 40 C.F.R. §§ 300.5 and 300.400(e) and requires a permit or approval, Respondents shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Agreement and Order is not, nor shall it be construed to be, a permit issued pursuant to any Federal, State, or Territorial statute or regulation.

L. Emergency Response and Notification of Releases

67. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, requires reporting to the National Response Center, telephone number (800) 424-8802, Respondents shall immediately orally notify the OSC, or, in her absence, the Chief of the Removal Action Branch of the ERRD of EPA, Region II, at (732) 321-6658, of the incident or Site conditions. Respondents shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this paragraph are in addition to, not in lieu of, reporting requirements under CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

68. If the event of any action or occurrence during the Respondents' performance of the requirements of this Agreement and Order which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding Paragraph. Respondents shall take such action in accordance with applicable provisions of this Agreement and Order including, but not limited to, the HSP. In the event that EPA determines that a threat to human health or the environment is posed by: a. the activities performed pursuant to this Agreement and Order; b. significant changes in conditions at the Site; or c. emergency

circumstances occurring at the Site, EPA may direct Respondents to stop further implementation of any actions pursuant to this Agreement and Order or to take other and further actions reasonably necessary to abate the threat.

M. Modifications

69. The OSC may make modifications consistent with the scope and objectives of this Agreement and Order of any plan or schedule required under this Agreement and Order by writing or by oral direction. Any oral modification made by the OSC pursuant to this Paragraph will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Agreement and Order may be modified in writing by mutual agreement of the Parties.

70. If Respondents seek permission to deviate from any approved Work Plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC and/or the OSC's designated EPA representative.

71. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Agreement and Order, or to comply with all requirements of this Agreement and Order, unless it is formally modified.

N. Oversight

72. During the implementation of the requirements of this Agreement and Order, Respondents and their contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondents, including inspections at the Site and at laboratories where analytical work is being done hereunder.

VIII. REIMBURSEMENT OF COSTS

73. Payment for Future Response Costs

- a. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondents a bill requiring payment that includes a Superfund Cost Recovery Package Imaging and On-Line

System ("SCORPIOS") Report. Respondents shall make all payments within thirty (30) days of receipt of each bill, except as otherwise provided in Paragraph 75 of this Agreement and Order.

b. Respondents shall make all payments required by this Paragraph by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures, as may be provided to Respondents by EPA Region II. To effect payment via EFT, Respondents shall instruct their bank to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to Respondents:

- Amount of payment
- Bank: **Federal Reserve Bank of New York**
- Account code for Federal Reserve Bank account receiving the payment: **68010727**
- Federal Reserve Bank ABA Routing Number: **021030004**
- SWIFT Address: **FRNYUS33**  
**Liberty Street**  
**New York, NY 10045**
- Field Tag 4200 of the Fedwire message should read:  
**D 68010727 Environmental Protection Agency**
- Name of remitter
- Settlement Agreement Index Number:  
**CERCLA-02-2010-2012**
- Site/Spill identifier: **02-RM**

c. At the time of payment, Respondents shall send notice that such payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

Sarah Flanagan  
Assistant Regional Counsel  
EPA, Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007

and

U.S. Environmental Protection Agency  
Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, OH 45268

- d. The total amount to be paid by Respondents pursuant to Paragraph 73(a) shall be deposited in the Standard Chlorine Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

74. In the event that payments for Future Response Costs are not made within thirty (30) days of receipt of the bill, Respondents shall pay Interest on any unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies and sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including but not limited to, payment of Stipulated Penalties pursuant to Section X.

75. Respondents may contest payment of any Future Response Costs billed under Paragraph 73 if they determine that EPA has made a mathematical error, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for the objection. In the event of an objection, Respondents shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 73. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York or the State of New Jersey and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA OSC a copy of the notice letter specified in Paragraph 73(c), if any, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures of Section VII.H. If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 73. If Respondents prevail concerning any aspect of the contested Future Response Costs, Respondents shall pay from the escrow account that portion of the contested Future Response Costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 73. Respondents shall be disbursed any

balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section VII.H shall be the exclusive mechanisms for resolving disputes regarding Respondents' obligation to reimburse EPA for its Future Response Costs.

#### IX. FORCE MAJEURE

76. "Force majeure," for purposes of this Agreement and Order, is defined as any event arising from causes beyond the control of Respondents or their contractors or subcontractors that delays the timely performance of any obligation under this Agreement and Order, notwithstanding Respondents' best efforts to avoid the delay. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any Work to be performed under this Agreement and Order or the financial difficulty of Respondents to perform such Work.

77. If any event occurs or has occurred that may delay the performance of any obligation under this Agreement and Order, whether or not caused by a force majeure event, Respondents shall notify by telephone the EPA OSC or, in her absence, the Chief of the Removal Action Branch of the ERRD of EPA Region II at 732-321-6658 within forty-eight (48) hours of when Respondents knew or should have known that the event might cause a delay. In addition Respondents shall notify EPA in writing within seven (7) calendar days after the date when Respondents first became aware or should have become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondents' rationale for interpreting such circumstances as being beyond its control (should that be Respondents' claim); (b) the actions (including pertinent dates) that Respondents have taken and/or plan to take to minimize any delay; and (c) the date by which or the time period within which Respondents propose to complete the delayed activities. Such notification shall not relieve Respondents of any of their obligations under this Agreement and Order. Respondents' failure to timely and properly notify EPA as required by this Paragraph shall constitute a waiver of Respondents' right to claim an event of force majeure for that specific event for the period of time of such failure to comply. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondents.

78. If EPA agrees that a delay or anticipated delay in performance of a requirement under this Agreement and Order is or was attributable to a force majeure event, then EPA will notify Respondents in writing of its decision and the time for performance

of the obligations under this Agreement and Order that are affected by the force majeure event will be extended as deemed necessary by EPA.

#### X. STIPULATED AND STATUTORY PENALTIES

79. If Respondents fail, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Agreement and Order, and such failure is not excused under the terms of Section IX (Force Majeure), Respondents shall, upon demand by EPA, pay a stipulated penalty to EPA in the amounts indicated below.

80. For all requirements of this Agreement and Order, stipulated penalties shall accrue in the amount of \$250 per day, per violation, for the first fourteen days of noncompliance, \$750 per day, per violation, for the 15<sup>th</sup> through 30<sup>th</sup> day of noncompliance, and \$1,500 for the 31<sup>st</sup> day of noncompliance and beyond.

81. Notwithstanding any other provision of this Agreement and Order, failure of Respondents to comply with any provision of this Agreement and Order may subject Respondents to civil penalties of up to thirty-seven thousand five-hundred dollars (\$37,500) per violation per day, as provided in Sections 109 and 122(1) of CERCLA, 42 U.S.C. §§ 9609 and 9622(1), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. § 19.4), unless such failure to comply is excused by EPA under the terms of Section IX (Force Majeure), above. Respondents may also be subject to punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Agreement and Order, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Agreement and Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Agreement and Order pursuant to Sections 106 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.

#### XI. OTHER CLAIMS

82. By issuance of this Agreement and Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents or their employees, agents, contractors, or consultants in carrying out any action or activity required pursuant to this Agreement and Order. Neither the United States nor EPA shall be held out as or deemed to be a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors,

representatives, assigns, contractors, or consultants in carrying out actions required pursuant to this Agreement and Order.

### XII. INDEMNIFICATION

83. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on or relating to the Site, including but not limited to claims on account of construction delays. Nothing in this Agreement and Order, however, requires indemnification by Respondents for any claim or cause of action against the United States based on negligent action taken solely and directly by EPA (not including oversight or approval of plans or activities of the Respondents).

### XIII. RESERVATION OF RIGHTS

84. Except as specifically provided in this Agreement and Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Agreement and Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring any Respondents and any other potentially responsible parties in the future to perform additional activities pursuant to CERCLA or any other applicable law.

85. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section VII.H (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that

Respondents shall pay pursuant to Section VIII (Reimbursement of Costs). Notwithstanding any other provision of this Agreement and Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law. Additionally, in the event EPA assumes performance of a portion or all of the Work pursuant to this Paragraph, Respondents shall be liable for a stipulated penalty in the amount of \$10,000.

#### XIV. COVENANTS NOT TO SUE

##### A. Covenant Not to Sue by Respondents

86. Respondents agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Agreement and Order, including, but not limited to:

a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. Any claim arising out of response actions at or in connection with the Work, including claims under the United States Constitution, the New Jersey State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. Any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work.

87. Nothing in this Agreement and Order shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA (42 U.S.C. § 9611) or 40 C.F.R. § 300.700(d).

##### B. Covenant Not to Sue by EPA

88. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Agreement and Order, and except as otherwise specifically provided in this Agreement and Order, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations

under this Agreement and Order, including, but not limited to, payment of Future Response Costs pursuant to Section VIII. This covenant not to sue extends only to Respondents and does not extend to any other person.

#### XV. CONTRIBUTION PROTECTION AND RIGHTS

89. The Parties agree that this Agreement and Order constitutes an administrative settlement for purposes of Sections 113(f)(2) and (f)(3)(B) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9613(f)(3)(B), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement and Order. The "matters addressed" in this Agreement and Order are the Work and Future Response Costs as defined herein. Upon termination and satisfaction of this Agreement and Order, Respondents have resolved their liability to the United States for the Work performed and for Future Response Costs.

90. Nothing in this Agreement and Order precludes the United States or the individual Respondents from asserting any claims, causes of action, or demands against any persons not parties to this Agreement and Order for indemnification, contribution, or cost recovery.

#### XVI. TERMINATION AND SATISFACTION

91. This Agreement and Order shall be terminated by EPA upon its written approval of Respondents' Final Report and certification (referred to in Section VII.E above), which shall demonstrate that all Work has been completed in accordance with this Agreement and Order.

#### XVII. SEVERABILITY/INTEGRATION/APPENDICES

92. If a court issues an order that invalidates any provision of this Agreement and Order or finds that Respondents have sufficient cause not to comply with one or more provisions of this Agreement and Order, Respondents shall remain bound to comply with all provisions of this Agreement and Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

93. This Agreement and Order and its appendix constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement and Order. The Parties acknowledge that there are no representations, agreements, or understandings relating to the


settlement other than those expressly contained in this Agreement and Order. The following appendices are attached to and incorporated into this Agreement and Order:

Appendix A: Site map


XVIII. EFFECTIVE DATE

94. This Agreement and Order shall become effective upon receipt by each Respondent of a fully executed copy of the Agreement and Order. All times for performance of actions or activities required herein will be calculated from said effective date.

U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Walter Mugdan

6/3/10  
\_\_\_\_\_  
Date of Issuance

 Director  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency  
Region II

In the Matter of the Standard Chlorine Chemical Company Superfund Site, EPA Index No. CERCLA-02-2010-2012

RESPONDENTS: Standard Chlorine Chemical Co., Inc;  
Beazer East, Inc.

CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Agreement and Order. Respondent Standard Chlorine Chemical Co., Inc. hereby consents to the issuance of this Agreement and Order and to its terms. Furthermore, the individual signing this Agreement and Order on behalf of the Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Agreement and Order and to bind the individual Respondent on whose behalf he or she signs.

FOR RESPONDENT STANDARD CHLORINE CHEMICAL CO., INC.

By: Margaret W. Kelley June 8, 2010  
Date  
Authorized Representative

Title: Vice President / General Counsel

Address: % Key Environmental, Inc.  
200 Third Avenue  
Carnegie, PA 15106

Phone Number: (917) 862-7826

In the Matter of the Standard Chlorine Chemical Company Superfund Site, EPA Index No. CERCLA-02-2010-2012

RESPONDENTS: Standard Chlorine Chemical Co., Inc.;  
Beazer East, Inc.

CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Agreement and Order. Respondent Beazer East, Inc. hereby consents to the issuance of this Agreement and Order and to its terms. Furthermore, the individual signing this Agreement and Order on behalf of the Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Agreement and Order and to bind the individual Respondent on whose behalf he or she signs.

FOR RESPONDENT BEAZER EAST, INC.

By: *John M. Blum*

Date *June 2, 2010*

Authorized Representative

Title: *Vice President, Secretary & General Counsel*

Address: *c/o Three Rivers Management, Inc.*

*One Oxford Centre, Suite 3000*

*Pittsburgh, PA 15219*

Phone Number: *(412) 208-8831*

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**KEY ENVIRONMENTAL  
INCORPORATED**

FIGURE 1

KEY ENVIRONMENTAL, INC.  
200 THIRD AVENUE  
CARBON, PA 15106